

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN 30 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0032-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
MICHAEL ANTHONY PADIAS,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20080191

Honorable Hector E. Campoy, Judge

REVIEW GRANTED; RELIEF DENIED

Michael Anthony Padias

Florence
In Propria Persona

H O W A R D, Chief Judge.

¶1 Petitioner Michael Padias challenges the trial court’s summary dismissal of his of-right petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We grant review, and, for the following reasons, deny relief.

¶2 Pursuant to a plea agreement, Padias was convicted of one count each of second-degree burglary, theft of a means of transportation, robbery, and credit-card theft. The trial court sentenced him to a combination of concurrent and consecutive, aggravated prison terms, totaling fourteen years.

¶3 Padias filed a timely notice of post-conviction relief, and the trial court appointed counsel to represent him. After counsel reported she had found no basis for a Rule 32 claim, Padias filed a pro se petition in which he argued the court had erred in considering a victim-impact statement submitted just before sentencing and his counsel had rendered ineffective assistance during that proceeding. The court denied relief, finding Padias had failed to state a colorable claim for relief and no purpose would be served by further proceedings. This petition for review followed.

¶4 On review, Padias reiterates the claims he raised below and asserts additional allegations of ineffective assistance of counsel. For instance, he now alleges counsel was ineffective because, in general, he “had a broken/fractured relationship” with his attorney, whom he claims was not thorough or prepared, had failed to investigate his case adequately, and had failed to consult with him. More specifically, he asserts, for the first time on review, that counsel was ineffective in failing to argue for a lesser sentence for one of his convictions, based on Padias’s limited involvement in that offense, and in failing to request mitigation or competency hearings. He also maintains the trial court

denied him due process by failing to conduct a mitigation hearing or mental health examination.

¶5 We review a trial court’s summary denial of post-conviction relief for an abuse of discretion. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). Similarly, if a sentence imposed is within statutory limits, we will not disturb it “unless there is a clear abuse of discretion.” *State v. Ward*, 200 Ariz. 387, ¶ 5, 26 P.3d 1158, 1160 (App. 2001). We find no abuse of discretion here.

¶6 The trial court clearly identified and resolved the issues Padias raised in his petition for post-conviction relief, in a manner that will be understood by any court in the future, and did not abuse its discretion in doing so. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). As the court pointed out, although the victim impact statement had not been disclosed timely, it only had corroborated other information already before the court. The court further concluded that, had counsel objected to the late disclosure, the result of the sentencing proceedings would have been no different. Because the court’s findings and conclusions are supported by the record before us, we see no purpose in rehashing the court’s order here and, instead, we adopt it. *See id.*

¶7 With respect to the new allegations Padias has raised on review, we will not consider them. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (reviewing court does not consider issues neither presented to nor ruled on by trial court); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review shall contain “[t]he issues

which were decided by the trial court . . . which the defendant wishes to present . . . for review”).

¶8 Accordingly, although we grant Padias’s petition for review, we deny relief.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge